



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/813,424	03/21/2001	John L. Blair	BLAIR 3-5-5-3	2399

27964 7590 12/22/2003

HITT GAINES P.C.  
P.O. BOX 832570  
RICHARDSON, TX 75083

EXAMINER
----------

CRAYER, CHARLES R

ART UNIT	PAPER NUMBER
----------	--------------

2682

3

DATE MAILED: 12/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/813,424**

Applicant(s)  
**Blair et al**

Examiner  
**Charles Craver**

Art Unit  
**2682**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Mar 21, 2001 is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

Art Unit: 2682

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in-

- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 1-6, 8-13 and 15-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Thomas et al, US Pat 6,141,546.

**Claim 1:** Thomas discloses a controlling means for a wireless system transceiver, comprising means for sensing a characteristic of at least two channels in a communication system, means to update a channel list associated with the channels based on the characteristic, and means to select one of the channels to communicate with (col 6 lines 4-43). **Claim 2:** Thomas discloses measuring signal quality. **Claim 3:** Thomas discloses a wireless local network. **Claims 4 and 5:** Thomas discloses updating the table, inherently periodically (col 6

Art Unit: 2682

lines 31-54). **Claim 6:** Thomas discloses an RF communications system, which would inherently use channels in a band.

**Claims 8-13:** claims 8-13 disclose the inherent method performed by the apparatus of claims 1-6, and as such are rejected for the same reasoning set forth above.

**Claim 15:** Thomas discloses a controlling means for a wireless system transceiver, comprising means for sensing a characteristic of at least two channels in a communication system, means to update a channel list associated with the channels based on the characteristic, and means to select one of the channels to communicate with (col 6 lines 4-43). Further, such is disclosed as a mobile cellular device, which inherently includes an antenna, filter and power source. **Claims 16-20:** please see the rejection of claims 2-6 above.

3. Claims 22-24, 28 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Robinson et al, US Pat 6,122,291.

**Claims 22 and 28:** Robinson discloses a method for transmitting data across a wireless communications network having multiple channels, comprising

establishing a bandwidth for transmission, determining a modulation scheme and inherent symbol rate, and selecting at least one channel to transmit, and transmitting the data using the scheme and rate (col 2 lines 3-24, col 6 line 50-col 7 line 14, col 4 lines 10-16). **Claims 23 and 24:** Robinson discloses determining a priority status and using such to determine bandwidth, and

Art Unit: 2682

thus modulation/symbol rate (col 4 lines 24-56). **Claim 30:** Robinson discloses a wireless local network.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson as applied to claim 22 above, and further in view of Frodigh et al, US Pat 5,726,978.

**Claim 25:** Robinson discloses applicant's invention of claim 22, but fails to disclose comparing interference.

Frodigh discloses the utility of measuring open channel interference in a communications system in order to allocate a channel with a given bandwidth and modulation scheme (abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add such a feature to Robinson, as Robinson discloses that interference levels should be reduced in channel allocation (col 6 lines 33-44). **Claims 26 and 27:** Frodigh discloses removing channels that are below a threshold based on the channels, and thus inherently the bandwidth (col 10 lines 15-36, col 11 lines 54-67).

Art Unit: 2682

6. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson as applied to claim 22 above, and further in view of Felix et al, US Pat 5,946,356.

Robinson discloses applicant's invention of claim 22, but fails to disclose using two channels or more.

Felix discloses the utility in a bandwidth-on-demand communication system to provide more than one channel depending on the needed bandwidth (abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add such a feature to Robinson, as Robinson discloses that high bandwidth communications are necessary, and adding the feature of Felix would allow even more bandwidth usage than a standard channel of Robinson could provide.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas as applied to claim 1 above.

While disclosing applicant's invention of claim 1 above, Thomas fails to disclose DSSS. However, such was notoriously well-known at the time of the invention, as exemplified by standard CDMA systems in which a mobile makes neighbor list channel measurements for handover purposes. Therefore, it would have been an obvious modification to one of ordinary skill in the art at the time of the invention to use the invention of Thomas in a Direct Sequence SS system in order to provide quality channel allocation in a number of systems.

Art Unit: 2682

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas as applied to claim 8 above.

Please see the rejection of claim 7 above.

9. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas as applied to claim 15 above.

Please see the rejection of claim 7 above.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Yun and Ahmadi discuss bandwidth-based channel allocation.

Lemson, Toshiyuki, Hamabe, Sporre and Mattila discuss means to measure signal quality for channel allocation.

**11. Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 872-9314, (for formal communications intended for entry)

**Or:**

Art Unit: 2682

(703) 872-9314 (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

Hand delivered responses should be brought to Crystal Park II, 2121 Crystal  
Drive, Arlington VA, sixth floor (receptionist).


12. Any inquiry concerning this communication or earlier communications from the examiner  
should be directed to Charles Craver whose telephone number is (703) 305-3965.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's  
supervisor, Vivian Chin, can be reached on (703) 308-6739.

Any inquiry of a general nature or relating to the status of this application or proceeding  
should be directed to the Group receptionist whose telephone number is (703) 305-4700.

cc

C. Craver  
December 12, 2003

 12-12-03  
**CHARLES CRAVER**  
**PATENT EXAMINER**